



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: NOVEMBER 08, 2022

IN THE MATTER OF:

Appeal Board No. 624676

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determinations disqualifying the claimant from receiving benefits, effective November 23, 2021, on the basis that the claimant voluntarily separated from employment without good cause and, in the alternative, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to November 23, 2021 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances on behalf of the claimant and the employer. By decision filed July 1, 2022 (), the Administrative Law Judge granted the claimant's application to reopen A.L.J. Case No. 122-02325, sustained the initial determination of voluntary quit without good cause and did not rule on the initial determination of misconduct.

The claimant appealed the Judge's decision to the Appeal Board, insofar as it sustained the initial determination. The Board considered the arguments contained in the written statement submitted on behalf of the claimant.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed as a full-time clinical field staff supervisor by the employer, a home healthcare provider, from September 3, 2019 through November 22, 2021. She did not have contact with patients but

she had contact with staff who provided patient care.

In August 2021, the New York State Department of Health (NYSDOH) notified the employer that it was required to mandate its employees receive the COVID-19 vaccine and the employer notified its employees of this requirement via email.

On September 15, 2021, the claimant applied to the employer for a religious accommodation from receiving the COVID-19 vaccine.

On September 27, 2021, the employer's Human Resources Team Leader (CG) notified the claimant that religious accommodations were not allowed per the NYSDOH mandate.

On November 2, 2021, CG notified the claimant that she would have to be vaccinated due to a court decision on October 29, 2021 which ruled against the temporary injunction that previously allowed healthcare workers to seek religious exemptions. That day, the claimant made an appointment with Rite Aid to get the Johnson & Johnson-Janssen vaccine on November 11, 2022.

On November 10, 2021, the claimant was tested for COVID-19. She tested positive and was placed under a quarantine order by the Monroe County Dept of Public Health through November 19, 2021.

On November 15, 2021, the NYSDOH notified the employer and other covered entities that religious accommodations for the COVID-19 vaccine mandate were no longer permitted and everyone without a medical exemption had to be vaccinated by November 21, 2021.

On November 16, 2021, the executive director sent an email indicating if an employee was diagnosed with COVID-19 within the prior 90 days then the employee should contact Human Resources prior to Monday, November 22.

On November 19, 2021, CG told the claimant's supervisor that the claimant would have to be vaccinated by November 22nd if she could not find a doctor who would sign a 90-day medical exemption. The claimant's primary care doctor advised her that he did not provide any medical exemptions for the COVID-19 vaccine.

The claimant did not attempt to get the vaccine on November 19 or November 20 because she was still under quarantine on November 19 and she was still ill on

November 20. On Sunday, November 21, the claimant did not get the vaccine.

On November 22, 2021, CG notified the claimant that the employer was ending her employment because she did not receive the COVID-19 vaccine.

OPINION: The credible evidence establishes that the claimant's employment ended on November 22, 2021 because she did not comply with the NYSDOH vaccine mandate which required all healthcare providers to be vaccinated for COVID-19. Significantly, the claimant was scheduled to receive the vaccine on November 11 until she got COVID-19 the day prior to her vaccination appointment and was required to quarantine through Friday, November 19. Due to her illness and quarantine, the claimant had only one day, a Sunday, to attempt

to get the vaccine. Therefore, the claimant's inability to receive the COVID-19 vaccine by the deadline was not due to fault on her part. Accordingly, the claimant's actions are neither a voluntary quit without good cause nor misconduct for unemployment insurance purposes. Her employment, therefore, ended under nondisqualifying conditions.

DECISION: The decision of the Administrative Law Judge, insofar as appealed from, is reversed.

The initial determinations, disqualifying the claimant from receiving benefits, effective November 23, 2021, on the basis that the claimant voluntarily separated from employment without good cause and, in the alternative, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to November 23, 2021 cannot be used toward the establishment of a claim for benefits, are overruled.

The claimant is allowed benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER